Senate Bill No. 16

CHAPTER 311

An act to add Section 2099.20 to the Fish and Game Code, relating to energy, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2011. Filed with Secretary of State September 22, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 16, Rubio. Renewable energy: Department of Fish and Game: expedited permitting.

(1) The California Endangered Species Act (CESA) requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species, and requires the Department of Fish and Game to recommend, and the commission to adopt, criteria for determining if a species is endangered or threatened. CESA authorizes the department to authorize the take of threatened species, endangered species, or candidate species by permit if certain requirements are met. CESA authorizes the department, in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission) and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, to design and implement actions to protect, restore, or enhance the habitat of plants and wildlife that can be used to fully mitigate the impacts of the take of endangered, threatened, or candidate species resulting from certain solar thermal and photovoltaic powerplants in the planning area of the Desert Renewable Energy Conservation Plan.

Existing law requires the department to collect, and requires the owner or developer of certain solar thermal powerplants or photovoltaic powerplants to pay, a one-time permit application fee of $75,000. Existing law requires the department to utilize the permit application fee to pay for all or a portion of the department's cost of processing incidental take permit applications pursuant to CESA.

This bill would require the department to take prescribed procedural steps regarding applications for certain eligible renewable energy projects, including determining whether the application is complete or incomplete, notifying the applicant of its determination, and approving or rejecting an incidental take permit application for an eligible project within specified timeframes. The bill would require the department to provide an accounting to the Legislature on incidental take permit applications for eligible renewable energy projects, and to report to the Legislature on the extent to which it arranges for entities other than itself to provide all or part of the environmental review of eligible renewable energy projects.

(2) This bill would declare that it is to become operative only if AB 13 of the 2011–12 First Extraordinary Session is enacted.

(3) The bill would also declare that it is to become operative on the effective date of AB 13 of the 2011–12 First Extraordinary Session.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is important to facilitate the permitting of renewable energy projects that are eligible renewable energy resources under the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code), including expediting the scientific evaluation by the Department of Fish and Game of the wildlife impacts of those projects with special attention to the impacts on threatened and endangered species.

(b) In imposing statutory deadlines on the review of these projects, it is important not only for the department to respond more efficiently, but also important for project proponents to submit accurate information from which the department can commence a complete review without being required to obtain further information in a piecemeal manner.

(c) It is reasonable to expect the department to expedite its decisionmaking in order to help achieve the renewable energy goals of the state and create jobs.

(d) The Legislature expects that the department may be inundated with more than 300 applications for renewable energy projects in this calendar year because of the increasing interest in renewable energy projects and because of the investment and tax provisions contained in state and federal law. It is important to give each of those applications fair consideration by the department and, absent the provisions of this act, the department will simply be unable to adequately review these applications.

(e) It is the intent of the Legislature to monitor closely the performance of the department in implementing this act. It is further the intent of the Legislature that the department use, upon appropriation by the Legislature, a small portion of the fees submitted to it by renewable energy applicants to provide the Legislature with an accounting of the department's review and decisionmaking process for these permit applications, to evaluate whether the process has been carried out as efficiently and as effectively as possible and in furtherance of the department's statutory responsibilities.

(f) It is further the intent of the Legislature to reevaluate the performance of the department in two years, and, if necessary, to consider whether there is a need to enact legislation that would provide incentives for timely permit decisions by requiring the department to refund a portion of permit fees in the event that the department failed to meet permit decisionmaking deadlines.

SEC. 2. Section 2099.20 is added to the Fish and Game Code, to read:

2099.20. (a) As used in this section, "eligible project" has the same meaning as defined in Section 2099.10.

(b) (1) At the request of the applicant, the department shall meet with the applicant in person or by telephone to develop a plan for processing the application and, to the extent feasible, identify and clarify information that will be needed in an application for a project subject to Section 2099.10 prior to its submittal to the department.

(2) Within 45 days after the department receives an application for a project subject to Section 2099.10, the department shall determine whether the application is complete or incomplete and shall notify the applicant of its determination. If the department determines that the application is incomplete, it shall concurrently identify and inform the applicant in writing of the specific information or supporting documentation that is needed to complete the application currently under review, unless otherwise requested in writing by the applicant. The department shall make all reasonable efforts to consolidate its information request into a single request.

(3) Within 30 days of receipt of the information requested of the applicant pursuant to paragraph (2), the department shall make a determination whether the application is complete.

(4) If the department determines pursuant to paragraph (3) that additional information is needed to complete the application, the department shall inform the applicant in writing of the specific information or supporting documentation that is needed to complete the application, and the director, or his or her designee reporting directly to the director, shall offer to meet with the applicant to review the application and establish a plan and a timeframe to complete the application, unless otherwise requested in writing by the applicant.

(c) Except as otherwise provided in subdivisions (d) and (e), the department shall approve or reject an incidental take permit application for an eligible project 60 days or less from the date the application is deemed complete, unless a longer period is agreed upon by the department and the applicant. If the department has not made a determination to reject or approve the incidental take permit application within 45 days after deeming the application complete, the director, or his or her designee reporting directly to the director, shall offer to meet with the applicant to review the status of the application.

(d) If the department deems an application is complete more than 60 days before the project is certified under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) by an agency other than the department, the department shall reject or approve the incidental take permit application within 30 days after the California Environmental Quality Act certification, unless a longer period is agreed upon by the department and the applicant. If the department is the lead agency under the California Environmental Quality Act, the department shall reject or approve the incidental take permit application concurrently with the California Environmental Quality Act certification.

(e) Subdivision (c) does not apply to projects that the department determines are eligible to obtain a consistency determination pursuant to Section 2080.1, in which case the department shall approve or reject a consistency determination application for these projects within 30 days after the director has received notice pursuant to Section 2080.1 that a federal permit has been issued.

(f) (1) By January 1, 2014, the department shall provide an accounting to the Legislature on incidental take permit applications for eligible projects. This accounting shall include, but shall not be limited to, all of the following:

(A) The number of applications received.

(B) The number of applications approved, rejected, or withdrawn.

(C) The type and nature of the incidental take permits sought, including, but not limited to, the number of acres in each permit, the location of the project, the list of endangered or threatened species and whether the species were state or federally listed, the land ownership, the other permits involved in the project during the permit review period and which agencies were involved, and any relevant special resource issues.

(D) The time that elapsed between when a permit was deemed complete and when it was approved, if the permit was approved.

(E) The staff time spent on each permit.

(F) Other information determined by the department to be relevant in assessing whether the permit approval process, including the deadlines prescribed by this section, provide for an efficient review process in furtherance of the department's statutory obligations.

(2) By January 1, 2012, and annually thereafter for two years until 2014, the department shall report to the Legislature on the extent to which it arranges for entities other than itself to provide all or part of the environmental review of eligible projects. The 2014 report may be combined with the report described in paragraph (1).

(3) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(4) Pursuant to Section 10231.5 of the Government Code, this subdivision is inoperative on January 1, 2016.

SEC. 3. This act shall become operative only if Assembly Bill 13 of the 2011–12 First Extraordinary Session is enacted.

SEC. 4. This act shall become operative on the effective date of Assembly Bill 13 of the 2011–12 First Extraordinary Session.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to expedite permitting of needed renewable energy projects as soon as possible, it is necessary for this act to take effect immediately.

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